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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/714,311 | 11/14/2003 | Carl J. Pacifico | 1001-3 CON | 2108 |
| 23869 | 7590 | 05/11/2005 | EXAMINER | |
| HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791 | | | TRAN LIEN, THUY | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1761 | |

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/714,311

Applicant(s)

PACIFICO, CARL J.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-11,13-20,22-25 and 27-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-11,13-20,22-25 and 27-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The 112 first paragraph rejection of claims 1-33 is hereby withdrawn.

The 112 second paragraph rejection of claim 1 is hereby withdrawn.

Claims 1-6,13 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson et al.

Johnson et al disclose encapsulated leavening ingredient comprising chemical leavening agent encapsulated with microporous lipid coating. The agent is encapsulated by spray chilling process. The particle sizes can be as low as a few microns on up to 100 microns. The lipid coating is an edible vegetable fat, animal fat, emulsifiers such as monoglyceride, diglyceride etc.. The core can consist of baking powder or other suitable leavening agent. The encapsulated leavening ingredient are suitable for use in frozen or refrigerated doughs. (see col. 2 lines 16-20, lines 44-45, col. 3 lines 1-23, col. 4 lines 1-10, col. 5 lines 30-35)

Johnson et al disclose all limitations of the above cited claims. The properties of microporous, hydration, hydration temperature and leach rate are inherent in the Johnson et al product because the leavening ingredient is coated by the same method as claimed, having the particle sizes that fall within the range claimed and using the same lipid coating as claimed. The limitation of "for leavening bread dough" is an intended use which does not determine the patentability of the product. Furthermore, it is inherent the ingredients disclosed by Johnson et al can have the same intended use because it is the same product.

Claims 8-11,15-20, 22-25, 27,29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al .

Johnson et al do not disclose the percent of the coating, the ingredient is leavening base, the ingredient is leavening acid, bread dough containing the encapsulated leavening ingredient, the amount of the ingredient used in the bread dough, the dough is muffin dough , method of making bread by incorporating the encapsulate leavening ingredient and the agent is sodium bicarbonate.

Johnson et al teach the weight proportion of total lipid to core can range from about 100:1 to .1:1 depending upon the intended usage of the encapsulated particles. Thus, it would have been obvious to one skilled in the art to determine the appropriate percentage of coating material depending on the product the encapsulated material will be used and the type of protection wanted. This parameter can readily be determined through experimentation with various amounts to find the most optimum amount for the intended purpose. It would have been obvious to one skilled in the art to use the encapsulated ingredient in any type of dough when one wants to obtain a control release of the chemical leavening agent. Johnson et al teach the ingredient is suitable for use in doughs which include many types of dough known to require leavening agent. It would have been obvious to encapsulate the acid or the base depending on the reaction wanted. Johnson et al disclose suitable core includes baking powder or other suitable leavening agents which would include leavening acid and leavening base. It would have been obvious to encapsulate sodium bicarbonate because it is a well known leavening agent. The amount of leavening ingredient used varies with the type of dough product; it would have within the skill of one in the art to determine the amount that is suitable for the product being made

Claims 14 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al in view of Katz et al.

Johnson et al do not disclose hydrogenated vegetable oil.

Katz et al disclose leavening agent encapsulated hydrogenated vegetable oil.

(see col. 3 lines 1-23)

Johnson et al teach using vegetable oil and other materials as coating agents. It would have been obvious to use hydrogenated vegetable oil because it is a known coating agent as shown by Katz et al.

Applicant's arguments with respect to claims 1-6, 8-11, 13-20, 22-25, 27-33 have been considered but are moot in view of the new ground(s) of rejection.

The 132 Declaration filed on 11/14/2003 have been considered but deemed to be moot in view of the new grounds of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 10, 2005


LIEN TRAN
PRIMARY EXAMINER
